

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

H. GUY RICHARDS, et. al.

PLAINTIFFS

vs.

Civil Action No. 1:94cv207-D-D

MISSISSIPPI GAMING COMMISSION,
et. al.

DEFENDANTS

MEMORANDUM OPINION

Presently before the court are motions by all parties for the entry of judgment as a matter of law in their favor. Both of the motions currently pending before this court concern the constitutionality of the Mississippi gaming statutes, and in particular the constitutional validity of Miss. Code Ann. § 97-33-1 with respect to the equal protection clause of the Fourteenth Amendment to the United States Constitution. Finding that the statutes in question are valid with regard to the arguments presented by the plaintiffs in this matter, the plaintiffs' motion shall be denied, the defendants' cross-motion shall be granted.

DISCUSSION

The plaintiff H. Guy Richards is an individual resident of Mississippi who seeks to institute a commercial gambling operation on the Tennessee-Tombigbee Waterway. The relevant Mississippi statute on gambling provides:

§ 97-33-1 Betting, gaming or wagering; exception from prohibition; penalty.

If any person shall encourage, promote, or play at any game, play or amusement, other than a fight or fighting match between dogs, for money or other valuable thing, or shall wager or bet, promote or encourage the wagering or

betting of any money or other valuable things, upon any game, play, amusement, cockfight, Indian ball play, or duel, other than a fight or fighting match between dogs, or upon the result of an election, event or contingency whatsoever, upon conviction thereof, he shall be fined in a sum not more than Five Hundred Dollars (\$500.00); and, unless such fine and costs be immediately paid, shall be imprisoned for any period not more than ninety (90) days. However, this section shall not apply to betting, gaming or wagering:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(c) That is legal under the laws of the State of Mississippi.

Miss. Code Ann. § 97-33-1 (Supp. 1994). Pursuant to the statute, gambling on the Tennessee-Tombigbee waterway is illegal, for such activity does not meet any of the statutory exceptions to the prohibition against such gaming. The plaintiffs contend that by permitting legal gaming on the Mississippi River and the Mississippi Gulf Coast, but prohibiting it on the Tennessee-Tombigbee Waterway, the statute violates the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

The plaintiffs correctly note that there is no constitutional right to gamble. Marchetti v. United States, 390 U.S. 39, 50, 19 L.Ed.2d 889, 88 S.Ct. 697, 704 (1968); United States v. Harvey, 869 F.2d 1439, 1447 (11th Cir. 1989). Nor does the statute in question distinguish between citizens on the basis of a protected status which justifies the application of either strict or even intermediate scrutiny by this court. See Plyler v. Doe, 457 U.S. 202, 217-18, 102 S.Ct. 2382, 2394-95, 72 L.Ed.2d 786 (1982). The mere fact that a statute draws a geographical distinction does not make it constitutionally suspect:

The Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to particular geographical or political division of the state, but, rather, equal protection clause is offended only if statutory classification rests on grounds wholly irrelevant to achievement of state's objective.

Kadrmas v. Dickinson Pub. Schools, 487 U.S. 450, 462, 101 L.Ed.2d 399, 412, 108 S.Ct. 2481 (1988) (citing Fort Smith Light Co. v. Paving Dist., 274 U.S. 387, 391, 71 L.Ed. 1112, 47 S.Ct. 595 (1927) and McGowan v. Maryland, 366 U.S. 420, 425, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961)); Holt Civic Club v. Tuscaloosa, 439 U.S. 60, 58 L.Ed.2d 392, 99 S.Ct. 383 (1978) (same). Contrary to the assertions of the defendants in this case, however, such legislation is not completely divorced from constitutional scrutiny. The challenged statutes are nonetheless, as the plaintiffs concede, subject to a "rational basis" inquiry. As explained by the Fifth Circuit:

Under a rational basis review, the court presumes state legislation to be constitutionally valid. A classification imposed by statute or law must merely be reasonable in light of its purpose and must bear a rational relationship to the objectives of the legislation so that all similarly situated people will be treated similarly.

Cunningham v. Beavers, 858 F.2d 269, 273 (5th Cir. 1988). Put more simply, "[i]f evaluation of the challenged regulation reveals any conceivable state purpose that can be considered as served by the legislation, then it must be upheld." Cunningham, 858 F.2d at 273. This court is not bound by explanations of rationality that may be offered by litigants or other courts. Kadrmas, 487 U.S. at 462; 101 L.Ed.2d at 412.

The question to be decided by this court, then, is whether there exists a rational basis for the Mississippi legislature to permit gaming in the manner prescribed by statute. In a search for this rational basis, the logical place to look is in the legislative history of the challenged statute. When enacting the amendments to the various statutes to permit "vessel gaming" in the state, the Mississippi legislature noted some of the reasons for such regulation:

(3) The Legislature hereby finds, and declares it to be the public policy of this state, that:

(a) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and competitively, that the rights of the creditors and licensees are protected and that gaming is free from criminal and corruptive elements.

(b) Public confidence and trust can only be maintained by strict regulation of all persons, **locations**, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment.

(c) All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state.

The Mississippi Gaming Control Act, 1990 Miss. Gen. Laws, Ex. Sess., ch. 45, § 2(3)(b),(c) (emphasis added). It is obvious that one of the primary and legitimate objectives of the Mississippi legislature was to ensure that the legal gaming industry was tightly controlled. This is certainly a legitimate objective considering the potential of the industry to foster criminal activity and consumer abuses. Are the geographical limitations rationally related to this objective? This court is of the opinion that they are. Geographic restrictions centralize the Mississippi gaming industry near the Mississippi river and the gulf coast. By limiting the gaming industry to the largest adjacent body of water and the largest river, the legislative placed a natural restriction upon the areas of the state which would have to be policed by the Gaming Commission. Enforcement of gaming laws and regulations on the legal gaming industry is more easily achieved when the entire state need not be canvassed by enforcement agencies. Further, the

limitations require separate operations to be in a closer proximity to one another than they would normally be in a completely open market. This proximity assists market forces in limiting the number of gaming operations within the state, which in turn aids in regulation by limiting the number of gaming sites to be regulated.

CONCLUSION

While the court is aware that there may exist other rational motives for the enactment of the Mississippi Gaming Control Act, the two already discussed by the court are more than sufficient to support the court's ruling today. It is not this court's duty to second-guess the wisdom of the Mississippi legislature, and it will not, particularly when no fundamental constitutional rights or constitutionally protected classes are affected. The defendants' motion for the entry of judgment as a matter of law shall be granted, and the plaintiffs' motion for the same shall be denied.

A separate order in accordance with this opinion shall issue this day.

THIS _____ day of May, 1995.

United States District Judge

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DEFENDANTS

ORDER GRANTING MOTION FOR ENTRY
OF JUDGMENT AS A MATTER OF LAW

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED THAT:

1) the defendants' motion for entry of judgement as a matter
of law is GRANTED.

2) the plaintiffs' motion for the entry of judgment as a
matter of law is DENIED.

3) the plaintiffs' claims for relief in this cause are
hereby DISMISSED.

All memoranda, depositions, affidavits and other matters
considered by the court in granting the defendant's motion for
summary judgment are hereby incorporated and made a part of the
record in this cause.

SO ORDERED, this the _____ day of May, 1995.

United States District Judge